

**LINDA K. PARKER**  
Claimant

**KELLY SERVICES, INC.**  
Respondent

**CONTINENTAL NATIONAL AMERICAN GROUP**  
Insurance Carrier

## ORDER

## ISSUES

- (1) Whether claimant suffered an accidental injury arising out of and in the course of her employment with the respondent; and
- (2) Whether claimant gave timely notice of the accident.

(1) The Administrative Law Judge found that the claimant had established that she was injured on July 24, 1995 while working for the respondent and the injury arose out of and in the course of her employment. The Appeals Board affirms this finding of the Administrative Law Judge. The Appeals Board finds that the testimony of the claimant and

the medical records of James L. Gluck, M.D., who saw the claimant at the request of the respondent on August 30, 1995 established that claimant's highly repetitive work activities required to be performed with her upper extremities aggravated a preexisting right upper extremity condition and caused her left shoulder to become symptomatic. The claimant has alleged her work activities caused injury from July 24, 1995 through the claimant's last day worked of July 31, 1995.

(2) The second issue that is requested by the respondent for Appeals Board review is whether claimant gave timely notice of her accidental injury. The notice statute in the Kansas Workers Compensation Act makes it a strict requirement that the employer be given notice of an accidental injury within ten (10) days unless the existence of just cause for not doing so can be established by the claimant. If just cause is established, then the employee has seventy-five (75) days from the date of accident to provide notice. See K.S.A. 44-520.

The Administrative Law Judge found that the claimant had just cause for failing to provide notice of accident within ten (10) days. The respondent argues that the claimant did not present evidence that established just cause for not giving notice of her accident within ten (10) days. The claimant argues that she did give notice of her accident within ten (10) days from the last day that she worked which was July 31, 1995. Claimant contends that she notified Tammy Gooch, her supervisor at C-Tech where she was placed to work by the respondent, that her left shoulder and right wrist were hurting numerous times while she was working for respondent at C-Tech. Claimant also argues that Tammy Gooch was a duly authorized agent for respondent and therefore she had actual knowledge of claimant's alleged accidental injury. Claimant additionally testified that she gave notice to Joanna Roiz, site coordinator for the respondent at C-Tech, by telephone on August 7, 1995 notifying her that pain in her left shoulder and wrist was the reason she had not been at work. Finally, claimant testified that she told Nancy Myers, staff coordinator for respondent, during a telephone conversation on August 10, that her work activities caused pain in her wrist and shoulder and she needed medical treatment.

The Appeals Board affirms the Administrative Law Judge's finding that claimant did not provide respondent with notice of her accident within ten (10) days from the last day she worked on July 31, 1995. However, the Appeals Board finds from the testimony that the Administrative Law Judge's conclusion that claimant had just cause for not giving notice of accident within ten (10) days should be reversed. It is inconsistent to argue, on the one hand, that claimant gave notice of the accident within ten (10) days and then argue, on the other hand, she had just cause for not giving the required ten (10) days notice. Furthermore, the record does not show just cause for claimant's failure to give timely notice.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes, dated December 11, 1995, is reversed and the claimant is denied benefits for injuries to her upper extremities, as claimant failed to give timely notice of accident as required by K.S.A. 44-520.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1996.

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

c: Dale V. Slape, Wichita, Kansas  
D. Steven Marsh, Wichita, Kansas  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director